Cahaya Utama Industries Sdn Bhd v Kong Kam Peng

HIGH COURT (SHAH ALAM) — GUAMAN SIVIL NO 22–16 OF 1993
K N SEGERA J
1 MARCH 2007

Land Law — Ownership — Title to land — Approval of final survey — Demarcation plan not submitted or not brought to the attention of the Chief Surveyor — Powers of the court to set aside the plan attached to the Final Title — Registrar of Titles to rectify records relating to the final survey

Tort — Trespass to land — Right of plaintiff to bring action — Whether plaintiff in position to allege possession and trespass of land by the defendant — Plaintiff not in actual occupation of land and having no knowledge as to the boundaries of the land — Whether plaintiff had established clear and exclusive possession of the land — Whether plaintiff entitled to damages for alleged trespass

The plaintiff (formerly known as Kaohyee Timber Company Sdn Bhd) is the legal owner of land held under title Q.T.(M) 28 Lot 586 Mukim of Sungai Buloh, State of Selangor since 15 February 1984. The defendant on the other hand, is the legal owner of land held under Q.T.(M) 30 Lot 587, Mukim of Sungai Buloh, State of Selangor since 18 August 1984. Titles in continuation for both the plaintiff's and defendant's land, which are neighbouring lots adjoining each other, have been issued by the Land Office. Following from a survey which was conducted and approved on 20 August 1988, the final title for the plaintiff's land, which was later sub-divided, was issued by the Land Office on 29 August 1988. In October 1988, the plaintiff filed a civil suit against the defendant at the Klang Sessions Court wherein it was alleged that the defendant had trespassed onto the plaintiff's land. Pursuant to the said civil suit, the plaintiff claimed for inter alia, possession of the land, demolition of building structures erected thereon, damages, interest and costs. The defendant, in her amended defence claimed various declaratory reliefs. However, no defence was filed to the defendant's counterclaim. The civil suit was then transferred and registered in the High Court at Shah Alam. From the evidence adduced, it is pertinent to note that (a) the plaintiff had not demarcated his land with any perimeter fence and nor did the plaintiff at any time, visibly define the boundaries of his land prior to the defendant going into possession and occupation of the defendant's land; (b) the plaintiff had not surveyed its land, prior to the defendant going into possession and occupation of the defendant's land; (c) the plaintiff had not asserted its rights to such surveyed land and its boundaries; and (d) the defendant, before going into occupation and possession of her land, had not surveyed and determined the legal boundaries of her said land.

Held, dismissing the plaintiff's claim with costs:

(1) Upon a consideration of all the evidence by the plaintiff and the defendant, it is manifestly clear that the plaintiff is barking up the wrong tree in filing a suit against the defendant for trespass and damages. This case is nothing more than a case of boundary dispute between two adjoining land owners, upon lands that had not been surveyed and boundaries not determined, in accordance to the area of land alienated vis a vis the original titles relating to the said lands. The plaintiff is attempting to steal a march to a substantial increase in area in land from that originally allotted (see para 6).

(2) There was no evidence that the plaintiff was in actual occupation of Q.T.(M) 28 and the titles in continuation at any time. Without being in actual occupation and not knowing where the boundary was, without emplacing any perimeter fencing, the plaintiff was in no position to assert any possession of the land and to allege trespass of the said land by the defendant (see para 12).

(3) Possession of the land by the plaintiff must be clear and exclusive to support any action for trespass against the defendant. The plaintiff however, had failed to establish clear and exclusive possession of the land before the alleged encroachment by the defendant (*Senik v Hassan & Anor* [1963] 29 MLJ 368 followed) (see para 13).

(4) With reference to the defendant's counterclaim, upon a consideration of all the evidence, the defendant has not proved any fraud on the part of the plaintiff, beyond reasonable doubt (see para 14).

(5) On the whole of the evidence before this Court, it was very clear, especially from the evidence of Leong Teng Boon (DW1), who was the chief surveyor, Selangor in April 1988, that he would not have approved the final survey submitted by the plaintiff's surveyor, Leong Yew Kuan (SP3), if he was aware of the encroachments as shown in the demarcation plan (exh P10) prepared by SP3. It was also very clear from DWl's evidence that exh P10 was never submitted to him by the plaintiff's surveyor, together with the final survey, or was in any other way brought to his attention by the plaintiff, its servants or agents (see para 14).

(6) In view of DWl's evidence, the plan attached to the Final Title No PM 97 Lot 19578 Mukim Sungai Buloh, Daerah Petaling, Negeri Selangor must be set aside. Any reliance placed on the said plan for any subsequent sub-divisons and alienations to the plaintiff is also set aside (see para 14).

[Bahasa Malaysia summary

Plaintif (yang dahulunya dikenali sebagai Kaohyee Timber Company Sdn Bhd) adalah pemilik di sisi undang-undang sebidang tanah di bawah hakmilik QT(M) 28 Lot 586 Mukim Sungai Buloh Negeri Selangor sejak 15 Februari 1984. Defendan pula adalah pemilik di sisi undang-undang sebidang tanah di bawah QT(M) 30 Lot 587, mukim Selangor sejak 18 Ogos 1984. Hakmilik-hakmilik berlanjutan untuk kedua-dua tanah plaintif dan defendan, yang bersebelahan lot bersempadanan antara satu sama lain telah dikeluarkan oleh Pejabat Tanah. Berikutan kaji selidik yang telah dijalankan dan disahkan pada 20 Ogos 1988, hakmilik akhir untuk tanah plaintif

yang telah dipecah bahagi telah dikeluarkan oleh Pejabat Tanah pada 29 Ogos 1988. Pada bulan Oktober 1988, plaintif telah memfailkan guaman sivil terhadap defendan di Mahkamah Sesyen Klang di mana plaintif mengatakan bahawa defendan telah menceroboh ke dalam tanah plaintif. Menurut guaman sivil tersebut, plaintif menuntut antara lain, pemilikkan tanah, meruntuhkan struktur bangunan yang dibina di atasnya, gantirugi, faedah dan kos. Defendan, dalam pindaan pembelaannya menuntut pelbagai relif-relif perisytiharan. Walaubagaimanapun, tiada pembelaan difailkan kepada tuntutan balas defendan. Guaman sivil kemudiannya dipindahkan dan didaftarkan di Mahkamah Tinggi Shah Alam. Daripada keterangan yang dikemukakan, adalah amat penting untuk diambil perhatian, bahawa (a) plaintif tidak membuat batasan ke atas tanahnya dengan sebarang pagar perimeter dan tidak juga plaintif pada setiap masa, secara jelasnya mentakrifkan sempadan tanahnya sebelum defendan memiliki dan menduduki tanah defendan; (b) plaintif tidak melakukan kaji selidik ke atas tanahnya, sebelum defendan memiliki dan menduduki tanah defendan; (c) plaintif tidak menyatakan hak-haknya ke atas kaji selidik dan sempadannya; dan (d) defendan, sebelum memasuki dan menduduki tanahnya, tidak menyatakan hak-haknya ke atas kaji selidik dan sempadannya.

Diputuskan, menolak tuntutan plaintif dengan kos:

(1) Apabila pertimbangan ke atas keterangan oleh plaintif dan defendan, ia adalah nyata bahawa plaintif telah tersalah dalam memfailkan guaman terhadap defendan untuk pencerobohan dan ganti rugi. Kes ini tidak lain dan tidak bukan hanyalah kes pertikaian persempadanan antara dua pemilik tanah yang bersempadan antara satu sama lain, Selaras dengan kawasan tanah berimilik berhubung dengan hakmilik-hakmilik asal berkaitan tanah-tanah tersebut. Plaintif mencuba untuk mencuri bagi menambahkan sedikit kawasannya daripada tanah asal yang telah diperuntukkan (lihat perenggan 6).

(2) Tiada sebarang keterangan bahawa plaintif adalah sebenarnya menduduki QT(M) 28 dan hakmilik-hakmilik berhubungan pada setiap masa. Tanpa sebenarnya menduduki dan tidak tahu akan sempadannya, tanpa menempatkan pagar perimeter, plaintif bukan dalam kedudukan untuk menunjukkan sebarang milikan tanah dan untuk mendakwa pencerobohan tanah tersebut oleh defendan (lihat perenggan 12).

(3) Pemilikkan tanah oleh plaintif hendaklah jelas dan ekslusif bagi menyokong sebarang tindakan pencerobohan terhadap defendan. Plaintif walaubagaimanapun, telah gagal untuk mewujudkan pemilikkan yang jelas dan ekslusif ke atas tanah sebelum dakwaan pencerobohan oleh defendan (*Senik v Hassan & Anor* [1963] 29 MLJ 368 diikuti) (lihat perenggan 13).

(4) Merujuk kepada tuntutan balas defendan, apabila mempertimbangkan kesemua keterangan, defendan tidak membuktikan sebarang penipuan di pihak plaintif, melampaui keraguan yang munasabah (lihat perenggan 14).

(5) Terhadap keseluruhan keterangan di hadapan mahkamah ini, ia adalah jelas, terutamanya daripada keterangan Leong Teng Boon, yang merupakan Ketua Juruukur, Selangor pada bulan April 1988, bahawa beliau tidak akan

meluluskan kaji selidik akhir yang telah dihantar oleh juruukur plaintif, Leong Yew Kuan (SP3), jika beliau menyedari ada pencerobohan-pencerobohan sebagaimana yang ditunjukkan dalam pelan persempadanan (eks P10) yang disediakan oleh SP3. Ia juga adalah jelas daripada keterangan DW1 bahawa eksibit P10 tidak pernah dihantar kepadanya oleh juruukur plaintif, bersama dengan kerja-kerja mengukur akhir, atau sebarang cara untuk membawa kepada perhatiannya oleh plaintif, pekerja-pekerjanya atau agen-agennya (lihat perenggan 14).

(6) Setelah meninjau keterangan DW1, pelan yang dilampirkan kepada Hakmilik Akhir No PM97 19578 Mukim Sungai Buloh, Daerah Petaling, Negeri Selangor hendaklah diketepikan. Sebarang pergantungan yang dilampirkan untuk pecah bahagi berikutnya dan pemindahan kepada plaintif adalah juga diketepikan (lihat perenggan14).]

Notes

For the case on title to land, see 8(1) *Mallal's Digest* (4th Ed, 2006 Reissue) para 3400.

For cases on right of plaintiff to bring action, see 12 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1458–1506.

Cases referred to

Senik v Hassan & Anor [1963] 29 MLJ 368 (refd)

Legislation referred to

National Land Code 1965 ss 166(1) (a) (ii), 170 (2)(c), 417

Rajesh Kumar (Joseph Yeo) for the plaintiff.
Ng Chek (Ng Chek & Co) for the defendant.

K N Segara J:

[1] The plaintiff (formerly known as Kaohyee Timber Company Sdn Bhd) is the legal owner of land held under title Q.T.(M) 28 Lot 586 Mukim of Sungai Buloh, State of Selangor since 15 February 1984 (see exh D18) [formerly known as Roll of Approved Applications No. 403/59 (380/59) dated 21 June 1966 (see exh D6)]. It states very clearly at the bottom of exh D6:

> Surveyed area 2 acres (blank) roods (blank) poles.
>
> *Exchanged for Qualified Title No. (M) 28 Lot No. 586 Mukim of Sungei Buloh.*
>
> *This 21st June, 1966*
>
> *Sd. & Sealed Collector of Land Revenue*

[2] The titles in continuation for Q.T.(M) 28 placeLot 586 (exh D18) are H.S.(M) 4848, No. P.T. 586, Mukim of Sungai Buloh, state of Selangor (exh D17) and final title No P.M. 97, No. Lot 19578 Mukim of Sungai Buloh, state of Selangor (exh Pll).

The said final title was issued by the Land Office on 29 August 1988 after a survey was conducted and approved on 20 August 1988. On 30 March 1994 title P.M. 97 was sub-divided into: A

(1) H.S.(M) 9022, No. PT 27048, Mukim of Sungai Buloh, State of Selangor (exh D4).

B

(2) H.S.(M) 9023, No. PT 27049, Mukim of Sungai Buloh, State of Selangor (exh D5).

(3) SIMPANAN JALAN

(4) KAWASAN KUBOR C

[3] The defendant is the legal owner of land held under Q.T.(M) 30 Lot 587, Mukim of Sungai Buloh, State of Selangor since 18 August 1984 (see exh Dl) [formerly known as Roll of Approved Applications No 374/59 (376/59) dated 21 June 1966 (see exh D26)]. It clearly states at the bottom of exh D26: D

> Survevyed area 1 acres 2 roods 00 poles.
>
> Exchanged for Qualified Title No. (M) 30 Lot 587 Mukim of Sungei Buloh
>
> This 21st day of June, 1966. E
>
> Sd. & Sealed Collector of Land Revenue
>
> The titles in continuation for Q.T.(M) 30 place Lot 587 are H.S.(M) 4489, No. PT 587, mukim of Sungai Buloh, state Of Selangor (exh D2) and H.S.(M) 9403, No. PT 587, mukim of Sungai Buloh, state of Selangor (exh D3).

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[4] In October 1988, the plaintiff filed a civil suit against the defendant at the Sessions Court Klang (62–777–88) alleging that the defendant had trespassed onto the plaintiff's land. The plaintiff claimed for possession of the land, demolition of building structures erected thereon, damages, interest and costs (see p 3, Bundle A). The defendant's defence (as amended) claimed various declaratory reliefs (see pp 7–13 Bundle A). The civil suit was eventually transferred from the Sessions Court and registered in the High Court, Shah Alam (22–160–93). The plaintiff did not file any defence to the defendant's counterclaim. G

[5] The plaintiff's land and the defendant's land are neighbouring lots adjoining each other. The plaintiff had at no time demarcated his land with any perimeter fence to assert his possessory right to a clearly identifiable area and thus prevent encroachment by any owners of any adjoining lots or trespass by anyone. The plaintiff had at no time visibly defined the boundaries of his land at any time prior to the defendant going into possession and occupation of the defendant's land. The plaintiff had no time surveyed its land, prior to the defendant going into possession and occupation of the defendant's land, and asserted its rights to such surveyed land and its boundaries. The defendant, too, had not surveyed her land and determined the legal boundaries of the defendant's land before going into occupation and possession, upon her purchase of same. H I

[6] Upon a consideration of all the evidence by the plaintiff and the defendant, it is manifestly clear that the plaintiff is barking up the wrong tree in filing a suit against the defendant for trespass and damages. This case is nothing more than a case of boundary dispute between two adjoining land owners, upon lands that had not been surveyed and boundaries not determined, in accordance to the area of land alienated vis a vis the original titles relating to the said lands. The plaintiff is attempting to steal a march to a substantial increase in area in land from that originally allotted. Upon issue of a title in continuation, as replacement for a damaged title, the plaintiff conducted a survey immediately to obtain a final title. The plaintiff, thereafter, alleged encroachment of its land by the defendant.

[7] For the purposes of the just determination of this suit it is salutary to keep in mind, at all times, the provisions of s 166 National Land Code (NLC), relating to circumstances in which title in continuation may be issued, and s 170 NLC, with regards to the form and contents of documents in continuation of title to land. Relevant to the facts of this case will be s l66(l)(a)(ii) which reads:

(1) The circumstances in which title in continuation may be issued under this Chapter to any land as a whole are as follows:

(a) where the Registrar or [Land Administrator] decides with respect to the register document of title thereto

(i) .....

(ii) at any time, that the document can, by reason of its physical condition, no longer be used;

Section 170(2)(c) which reads:

(2) Every such document of title:

(a) (a).....

(b) (b).....

(c) (c) shall contain, except in so far as they relate to matters which have ceased to be effective, the like memorials, endorsements, and other entries as are contained in the subsisting register document (but, where that document is a certificate of title issued under any previous land law, setting out in full any conditions and restrictions in interest therein referred to)

[8] The original provisional area of plaintiffs land was two acres (see exhs D 6 and D 18). The plaintiff had known at all material times, prior to the defendant going into occupation of her land that the provisional area allotted to it vis a vis title D6 and D18 was two acres. The plaintiff asserted in evidence that D6 was in a bad condition with cellophane tape, torn, and not clear. It was taken to the Land Office in Petaling Jaya or Subang for a new title to be issued. The plaintiff did not call anybody from the relevant Land Office to testify.

[9] Tan Hai Seng (SP5) testified for the plaintiff, under examination-in-chief, inter alia:

I am the director and shareholder of the plaintiff company. I cannot re-collect when I was appointed as director of the plaintiff company.

When I was appointed as a director of the company, the plaintiff was the owner of land H.S.(M) 4848.

According to Dl 7 the owner ofH.S.(M) 4848 is Kaohyee Timber Company Sdn Bhd.

I bought the shares of Kaohyee Timber Company Sdn Bhd either in 1985 or 1986. I bought 100% shares of Kaohyee Timber Company Sdn Bhd. I then appointed my wife and I as the Directors of Kaohyee Timber Company Sdn Bhd. The new Board of Directors then changed the name of the company Cahaya Utama Industries Sdn Bhd.

The change of name was registered on 9 August 1988.

When I was appointed director of plaintiff company H.S.(M) 4848 was an asset of the plaintiff company. There were no other assets. Plaintiff then intended to develop the piece of land.

In 1985 when I bought the shares of Kaohyee Timber Sdn Bhd I knew the existence ofH.S.(M) 4848. At that time I did not know the exact location of the piece of land. In 1985 I knew the exact location of this piece of land. At that time I did not know the exact boundaries of the land (in 1985). I received a title to the land in 1985 from Kaohyee Timber Company Sdn Bhd when I bought 100% of its shares. The title was in a bad condition with cellophane tape and torn. It was not clear. Then I brought this title to the Land Office in PJ or Subang. The officer at the Land Office informed me that I should submit a new application form and when a new title is ready he will notify me by letter. The officer told me to keep the torn and unclear title and to submit application for title. He informed me once the new title is issued I will have to surrender the old title to the Land Office. I was asked to fill in forms and submit to the Land Office. In the form I was asked to write down the old title number ie Q.T.(M) 28. The Land Office did inform me that the new title is ready and I was asked to bring the old title to the Land Office. I did go and give the old title to the Land Office. The Land Office gave me a new title and I was asked to acknowledge receipt. I made the application in 1986 and I received the new title in 1987.

[Bundle C page 4 (Dl 7) referred to witness]

This was the new title given to me by the Land Office.

Upon receiving the new title (D17) I was rather surprised to see the acreage stated therein. The new acreage is 3.1 acres. I asked the Land Office why was this so. I asked the Land Officer whether the acreage of my land is 3.1 acres ie the plaintiff land. The officer informed me this is a Q.T (M) and the acreage could be more or less.

The Land Officer said if I want to know the exact measurement of the land I should go and do a final title. I applied for a final title based on H.S.(M) 4848.

When I received Q.T.(M) 28 from Kaohyee Timber Company Sdn Bhd in 1985/6 I did not know what a final title is.

My wife and I bought 100% shares of Kaohyee Timber Company Sdn Bhd because this company was indebted to me. I bought the shares of 5 or 6 people who made up the 100% shares.

I was instructed by Land Office to engage a surveyor. In 1987 I engaged Juru Ukur Ray a — one Mr Leong. The Land Office recommended this company as they are more experienced and know what to do.

The surveyor did conduct a survey but he did not tell me when he did the survey.

Before 1987 Kaohyee Timber Company Sdn Bhd occupied this lands. After the survey was done I am able to ascertain the boundary of the land.

When Kaohyee Timber was occupying the land Kaohyee did not put up any fence to demarcate their land.

When my wife and I bought 100% shares of Kaohyee Timber, we did not put up any perimeter fence to demarcate our land on Q.T.(M) 28. On 27/4/87, my wife and I did not put up any perimeter fence on Q.T.(M) 28 which became H.S.(M) 4848. I agree that in 1996 the lease on H.S.(M) 4848 expired. My wife and I did not put up any perimeter fence right up to the expiry of the lease in 1996

I did not put up any perimeter fence, as I did not know where the boundary was.

I obtained the final title to H.S.(M) 4848 on 29 August 1988.

My surveyor applied.

Under cross-examination, SP5 testified inter-alia:

It is true I said in examination -in-chief that my Q.T.(M) 28 title was badly torn and I had submitted to Land Office to issue with a new title.

[Bundle C p 4 exh D17]

I did not pay any premium for this title. I was not asked to pay. It was in replacement ofQ.T.(M) 28 which I handed over to the Land Office because it was badly torn.

I did not pay any premium for the 1.18 acres in excess of 2 acres found on land H.S.(M) 4848 given in replacement ofQ.T.(M) 28.

[Bundle Cpages 6–8 referred to witness (PI 1)]

This P.M. 97 is my final title ofH.S.(M) 4848.

P.M. 97 is a title in continuation ofH.S.(M) 4848.

[10] In re-examination, SP5 testified, inter alia:

I did not pay any premium on the excess land in H.S.(M) 4848 over Q.T.(M) 28 because the government did not ask me or notify me.

[11] It is without doubt very clear, from the evidence of SP5 that when he and his wife bought 100% shares of Kaohyee Timber, they did not put up any perimeter fence to demarcate their land Q.T.(M) 28 which became H.S.(M) 4848. SP 5 also conceded that when Kaohyee Timber was occupying the land, Kaohyee did not put up any fence to demarcate its land. SP5 agreed in his testimony that the lease on H.S.(M) 4848 expired in 1996, and that he and his wife did not put up any perimeter fence right up to the expiry of the lease in 1996. SP5 conceded in his testimony that he did not put any perimeter fence as he did not know where the boundary was. SP5 (and his wife) are the alter ego of the plaintiff company in this civil suit.

[12] There was no evidence that the plaintiff was in actual occupation of Q.T.(M) 28 and the titles in continuation at any time. Without being in actual occupation,

not knowing where the boundary was, and without emplacing any perimeter fencing, the plaintiff is in no position to assert any possession of the land, to allege trespass of the said land by the defendant. In *Senik v Hassan & Anor* [1963] 29 MLJ 368 Suffian J held:

> The law of trespass is in my view also quite clear.
>
> Trespass is an injury to a possessory right. The plaintiff must have been in possession at the time of the trespass. Any form of possession, so long as it is clear and exclusive and exercised with the intention to possess, is sufficient to support the action. It is not necessary that the plaintiffs possession should be lawful and actual possession is good against all except those who can show a better right of possession in themselves.

[13] Possession of the land by the plaintiff must be clear and exclusive to support any action for trespass against the defendant. The plaintiff has failed to establish clear and exclusive possession of the land before the alleged encroachment by the defendant. In the circumstances, the plaintiff's claim for damages against the defendant for trespass is dismissed with costs.

[14] With reference to the defendant's counterclaim, upon a consideration of all the evidence before me very carefully, I find that the defendant has not proved any fraud on the part of the plaintiff, beyond reasonable doubt. However, on the whole of the evidence before this Court, it is very clear, especially from the evidence of Leong Teng Boon (DW1), who was the Chief Surveyor, Selangor in April 1988, that he would not have approved the final survey (exhibit D16A) submitted by the plaintiffs surveyor, Leong Yew Kuan (SP3), if he was aware of the encroachments as shown in the demarcation plan (exh P 10) prepared by SP3. It was very clear from DW1's evidence that exh P 10 was never submitted to him by the plaintiff's surveyor, together with the final survey, or in any other way brought to his attention by the plaintiff, its servants or agents. DW1 testified, inter alia:

> In April 1988 I was the Chief Surveyor, Selangor Survey Department. My name appears on this certified plan PA 10–05716759 (exhibit D16A). I approved this survey on 26 April 1988.
>
> [P 10 referred to witness]
>
> This is merely a plan to show what is purported to be indicated on the plan made by the licensed surveyor concerned. It is not an approved plan.
>
> This plan (P 10) shows purported encroachments on Lot 19578.
>
> [P 10 cross-referred to D 16A]
>
> I don't remember seeing this plan at all in June 1987. When I approved Dl 6A, I was not aware at all of the existence of PI 0. PI 0 was never submitted to me and to my office to the best of my knowledge.
>
> I definitely would not have approved plan D16A on 26/4/1988 as the Pengarah Ukur, Selangor if there were purported encroachment on Lot 19578.
>
> As Pengarah Ukur Selangor if there were encroachment on Lot 19578, I would have rejected the plan submitted by the licensed surveyor and returned the file to him, telling him of the

encroachment. As far as the Survey Department is concerned everything submitted must be in order otherwise we would reject it. We will not hold any enquiry.

The field book of the surveyor submitted to the Survey Department must show any encroachment which is natural or artificial found at the time of survey especially near the disputed common boundaries of owners of land.

As far as I can remember, nothing was shown in all the pages of the field book submitted to the Department by Mr Leong Yew Kuan with reference to artificial or natural features along the boundaries of the land placeLot 19578.

[Bundle E p 1 referred to witness]

I agree that based on the information on this page of the Field Book the survey is in respect of Lot 19578.

[Bundle C pages 6, 7 and 8 referred to witness (PI 1)]

Based on this document of title Lot 19578 is in respect of placeLot 586 H.S.(M) 4848.

There is no obligation by a licensed surveyor to plot the neighbouring lands to a land under survey by him for the purposes of issue of a final title to the owner of same.

[PI 0 referred to witness]

If the surveyor found the artificial features like the fence line, factory foundation, semi concrete building, in 1987 when he did a survey, the field-book should show all the features. He is duty bound to do so by survey regulations.

Under cross-examination DW1 testified inter-alia:

[D 16A referred to witness]

This is the plan approved by me and forms part of the final title. The final title is not issued by the Survey Department. It is issued by the Land Office. The final title is prepared by the Survey Department and a copy of the approved plan of the land surveyed is attached to the Final Title. However, the final title is issued by the Land Office.

As far as I know during my time at the Survey Department, Selangor no application was made by any of the owners of neighbouring lots to 19578 for final title

In view of DW1's evidence I am satisfied that the plan attached to the Final Title No PM 97 Lot 19578 Mukim Sungai Buloh, Daerah Petaling, Negeri Selangor (exh P11) must be set aside. Any reliance placed on the said plan for any subsequent sub-divisons and alienations to the plaintiff is also set aside. Pursuant to s 417 NLC the Registrar of Titles is directed to rectify all records relating to D16A as the final survey plan in exh P11. The Registrar of Titles and/or Land Administrator is hereby directed to resolve the boundary dispute between the plaintiff and defendant by causing a final survey to be made for the respective lands owned by the plaintiff and the defendant based on Q.T.(M) 28 (exh D18) and Q.T.(M) 30 (exh D20) and immediately, thereafter, to cause final titles to be issued to the plaintiff and defendant for the said respective lands. The parties herein shall be at liberty to sue for possession and damages, if any, after the issue of fresh final titles pursuant to such final survey.

Costs to the defendant on the counterclaim.

Reported by Eugene Daniel Louis